IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7080 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAGINDAS J MEHTA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7080 of 1989

MR PV HATHI for Petitioner No. 1

Mr. Siraj Ghori, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 01/12/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Hathi for the petitioner; Mr. Siraj Ghori, learned AGP for the respondents. It is a clear case of lethargic approach of

the State Government in not paying the due amount to a retired employee since number of years only under the guise of pendency of the litigation and that is how, when this matter was taken up today for final hearing, though the grievance has been satisfied after a pretty long time, request has been made on behalf of the petitioner to award interest upon the said payment which has not been made in time to the petitioner and the request has also been made for awarding heavy costs against the State Government. For considering these two requests made by the learned advocate Mr. Hathi for the petitioner, few facts of the present petition are required to be kept in view, as under:

In the year 1978, a petition was filed before this court as the seniority of the petitioner in the cadre of Aval Karkun as on 1.11.1956 was not fixed and for further promotion as Mamlatdar and Deputy Collector on the basis of his new seniority. On 31.3.1979, the petitioner retired as Deputy Collector pending the petition. On 30.11.1983, said petition being SCA NO. 190 of 1978 was allowed and the State Government was directed to fix the seniority in the cadre of Mamlatdar and Deputy Collector with all consequential benefits, fixation of pay scales, superannuation benefits, within two months from the date of receipt of the writ. On 29.1.1985, the petitioner filed contempt petition no. 703 of 1985 before this Court as the said judgment was not complied with and implemented. On 25.2.1986, on notice of contempt being received, the State Government issued a Resolution only with regard to the deemed date of promotion of the petitioner as Mamlatdar as per Annexure B, page 18, and though in case of other employees similarly situated, a similar order dated passed on 25.7.1985 as per Annexure C, page 21, refixing seniority both as a Mamlatdar and Deputy Collector. Thereafter, on 13.2.1987, the State Government, after referring to the contempt proceedings issued another order of giving him promotion on the post of Dy. Collector as per Annexure E, page 25. Thereafter, in September, 1989, this petition was filed by the petitioner as the aforesaid contempt petition was disposed of by the Court on the ground of limitation.

On 18.12.1992, affidavit in rejoinder to the petition was filed by the Under Secretary admitting the delay in compliance of the judgment of this court without making any reference about the refixation of pension and payment of the difference of pension as can be seen from para 7 and 10. Rejoinder thereto was filed on 27.1.2003. According to the petitioner, the respondents have

complied with the judgment and order of this court and the payments to that effect with consequential benefits have been made in April, 1987 namely four years after the judgment and (b)difference of Rs.7000/- payable in 1969 is paid in 1987 i.e. after 18 years. According to the petitioner, the pension refixation and the payment of difference seems to have been done somewhere around 5th June, 1993 i.e. 13 years after the retirement and and ten years after the judgment and that too after three litigations. According to the petitioner, compensation in the form of quantified cost as well as interest is required to be paid as claimed in the petition and on the well settled principles, when delay is not explained, as there was willful and deliberate delay in settling the claim of the petitioner as compared to other cases of similarly situated employees as referred to in the petition, showing discriminatory treatment and total lack of respect in complying with the judgment of the Court. The petitioner has reached the age of 85 years at present.

During the course of hearing, it was submitted by the learned advocate Mr. P.V.Hathi for the petitioner in view of the approach and conduct of the respondents and willful non compliance of this court's order and judgment, the petitioner is entitled for interest and costs. In support of his submissions, he has relied upon the following two judgments :

(1) AIR 1999 SC 1212 [Dr. Uma Agrawal versus State of U.P. and another]
(2) 1996 (2) GCD 650 (Guj) [Vinodday Fulchand Shah versus State of Gujarat]

Relying upon the aforesaid two decisions, it was submitted by the learned advocate Mr.Hathi that even for the delay of five years in disbursement, penal interest has been awarded by the apex court which was quantified, in the facts of that case, at Rs.1,00,000.00 Similarly, this Court has also awarded interest at the rate of 12 per cent p.a. upon the due amount from the due date.

Learned AGP Mr.Ghori appearing for the respondents has submitted that at the relevant point of time, one special civil application no. 1145 of 1979 filed by the State of Maharashtra in respect of the fixation of the seniority of Mamlatdar between 1st November, 1956 to 30th April, 1960 was pending and that issue was not finalized and that is how the payments were not made to the petitioner. He emphasized that in view of the pendency of the litigation, the State Government

has not been able to finalize the case of the petitioner and, therefore, necessary payments were not made at the relevant point of time. He also submitted that now the benefits have already been paid to the petitioner and whatever time consumed has been consumed only because of the pendency of the proceedings and, therefore, petitioner is not entitled for any interest or costs. Except these submissions, no other submissions have been made by the learned AGP Mr. Ghori on behalf of the respondents.

I have considered the submissions made by the learned advocates for the parties while keeping in mind the facts narrated by this court as referred to above.

First of all, it is required to be noted that the matter being special civil application no. 190 of 1978 was decided by this court on 30th November, 1983 in favour of the present petitioner and the said judgment and order of this court dated 30.11.1983 has not been challenged by the State Government before the Higher Forum and yet the State Government has not complied with the said judgment and order and in view of that, above referred contempt petition was filed by the petitioner before this Court. As regards the submission made by Mr. Ghori that the benefits were not paid in time because of the pendency of the petition filed by the State of Maharashtra being Special Civil Application No. 1145 of 1979, according to Mr. Hathi, said petition was disposed of in or around 1984-85. It is also necessary to be noted that even after the disposal of the said petition, the payments have not been made immediately but have been made after the delay of about two years. Since the judgment and order of this court was not challenged by the State Government before any higher forum, the State Government is not justified in delaying the payments as per the judgment and order dated 30.11.1983. It also shows that the State has no regard or respect for the orders of this Court. Being the State, it is the pious duty of the State Government to execute and implement the orders and directions of this court unless there are specific directions issued by the Higher Forum not to implement the same. When there is no challenge to the order and judgment of this court dated 30.11.1983 in Special Civil Application NO. 190 of 1978, the State Government is not justified in delaying such payments to the petitioner immediately or within reasonable period. Even pending proceedings, as submitted by the learned AGP Mr. Ghori that one petition being SCA No. 1145 of 1979 was filed by the State of Maharashtra, it may be a connected matter but in view of the judgment of this

court in favour of the petitioner dated 30.11.1983 which was not challenged before the higher forum by the State Government, the State Government ought to have made payments of the benefits flowing from the said judgment without being influenced by the pendency of the said petition as it were not the directions of this court that the said judgment and order shall be subject to the result of the petition filed by the State of Maharashtra. Even after the disposal of the petition filed by the State of Maharashtra in or around 1984-85, the State Government was not keen enough to immediately comply with the judgment and order of this court dated 30.11.1983 and after about two years or so, the payments were made to the petitioner. In view of such facts of the present case, according to my opinion, the State Government was not justified in not complying with the judgment and order of this court immediately. I have considered the aforesaid two judgments cited by Mr.Hathi.

In the matter of Dr.Uma Agrawal v. State of UP & Another, AIR 1999 SC 1212, there was delay in payment of retiral benefits/pension. It was observed by the apex court hat he Government department should initiate various steps for compilation of all necessary data and preparation of necessary document at least two years in advance of date of retirement and in view of the inexcusable delay of five years in disbursement of such payments, penal interest payable was quantified at Rs.1 lakh by the apex court.

I have also considered the observations made by this Court in para 4 in the matter of Vinodray Fulchand Shah versus State of Gujarat, 1996 (2) GCD 650 (Guj). Para 4 of the said judgment is reproduced as under:

"4. Taking into consideration the facts and circumstances of the case, I am satisfied that the respondents NO. 1 and 2 are wholly responsible for the delay in finalized the pension case of the petitioner. The petitioner should have been paid the amount of pension and other retirement benefits within a month from the date of passing of the resolution dated 15.10.84, instead of paying him only provisional pension and provisional amount of gratuity. Anyhow, the amount should have been paid to the petitioner within reasonable time i.e. after one month from the date of resolution dated 7/10.11.88. Even after filing this writ petition, nothing has been done expeditiously in this respect.The petitioner has been deprived of the benefit of huge amount

of Rs.3,38,609.1 ps. for a considerable long period. In the petition, the petitioner has claimed interest on the arrears of pension and other retirement benefits from 14th July, 1983.

But I do not accept this claim nor it can be legitimately claimed because the pension scheme itself has been notified vide resolution dated 15th October 1984. Under that scheme, case of the employees, as per the respondents, who sought voluntary retirement, was not covered.The next resolution has been passed on 7/10.11.88 extending the benefits to the teachers of Non Government COlleges who sought voluntary retirement. Still the point whether the petitioner is entitled to the benefit or not has remained in controversy. The petitioner approached this Court by filing this writ petition only on 14th December, 1989 and that is precisely the date from which he can be awarded interest on the arrears of the pension and terminal benefits. The next conclusion which arises is the rate at which interest on the arrears has to be awarded to the petitioner. The petitioner claims interest at the rate of 18 per cent per annum. But the learned counsel for the petitioner has failed to cite any authority before me wherein this court has awarded interest at the rate of 18 per cent per annum. Along with this petition, the petitioner has filed a copy of the judgment of this court in special civil application NO. 1429/92 decided on 22.6.94 and in that case, interest was awarded at the rate of 12 per cent per annum.That was a case of delayed payment of gratuity, commuted pension and arrears of pension etc. Copy of the another decision in Special Civil Application NO. 305/88 on 13.2.91 has also been placed for the consideration of this by the learned counsel for the petitioner and in that case also, interest has been awarded at the rate of 12 per cent per annum on the arrears of terminal benefits. Reference may also be made to a decision of the Supreme Court in the case of Union of India vs. SS Sandhawalia reported in JT 1994 (1) SC 62. That was a case where certain monetary benefits which were payable to the respondent therein was paid after making considerable delay. The Supreme Court has awarded interest in that case at the rate of 12 per cent per annum. Having taken into consideration all these three decisions, I am

satisfied that the petitioner is entitled for the interest on the arrears of pension and other retirement benefits at the rate of 12 per cent per annum from the date of filing of this writ petition i.e. 14th December, 1989 to 21st July, 1992."

Looking to the facts as narrated hereinabove, the petitioner was entitled for seniority in the cadre of Mamlatdar and Deputy Collector with all consequential benefits including fixation of pay scales prior to the date of his retirement means 31st March, 1979. Ultimately, those legal rights of the petitioner were recognized and crystalized by this court by passing judgment and order dated 30.11.1983 in special civil application no. 190 of 1978 with a direction to the respondents to fix the seniority of the petitioner in the cadre of Mamlatdar and Deputy Collector with all consequential benefits fixation of and the superannuation benefits within two months from the date of receipt of writ from this court. Said directions of this court were implemented by the respondents by making payments in the month of April, 1987 for which the petitioner was otherwise entitled in the year 1969. Thus, said benefits were paid after a period of 18 years and similarly, the amount of difference of pension was paid to the petitioner after the period of 13 years, in the year 1987 whereas the petitioner retired in the year about 1979. In such circumstances, recently, in the matter of South Eastern Coalfields Ltd. v. State of M.P. and others reported in 2003 AIR SCW 5258, the apex court has considered a reverse case where by obtaining an interim order, some restrictions were imposed against the defendant and ultimately, the petition was dismissed and the loss caused to the defendant because of the operation of the interim orders against him and, therefore, the defendant has been compensated by the apex court by directing to pay the said amount with interest examining the principles of restitution under section 144 of the Code of Civil Procedure which has been statutorily recognised and also considering a pre existing rule of justice, equity and fair play for restitution of the original situation by making or by ordering necessary payment of interest to an aggrieved party. This aspect has been examined by the apex court in a reverse case. However, the case on hand being a positive case wherein legal rights of the petitioner were wrongly denied initially, after such legal rights were recognized by this court by order and judgment dated 30.11.1983, payments of the benefits flowing from such order were delayed without any legitimate and valid cause without

challenging such order before the higher forum and thus, disregarded the verdict of this court for a considerable long period, the principles laid down therein or the ratio of the decision of the apex court would apply to the facts of the present case. Relevant observations made by the apex court in para 24 and 25 of the said decisions (page 5270 to 5272) are reproduced as under:

> 24. In our opinion, the principle of restitution takes care of this submission. The word 'restitution' in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order,what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (See Zafar Khan & Ors. v. Board of Revenue, UP & Ors AIR 1985 SC 39). In law, the term 'restitution' is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; (iii) compensation or reparation for the loss caused to another. (See Black's Law Dictionary, Seventh Edition, P. 1315), the Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that 'restitution' is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for inquiry done. "Often, the result in either meaning of the term would be the same..... Unjust impoverishment as well as unjust enrichment is a ground for restitution. If the defendant is guilty of a non tortious misrepresentation,the measure of recovery is not rigid but as in other cases of restitution, such factors as relative fault, the agreed upon risks and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed". The principle of restitution has been statutorily recognized in S. 144 of the Code of Civil Procedure, 1908. Section 144 of the CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the Court merges into a final decision. The validity of an interim

order, passed in favour of a party,stands reversed in the event of final decision going against the party successful at the interim stage. Unless otherwise ordered by the COurt,the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the COurt,or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution would far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party who has gained by the interim order of the Court so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the Court at the stage of final decision, the Court earlier would not or ought not to have passed. There is nothing wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.

25. Section 144 of the CPC is not the fountain source of restitution; it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from S.144, the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties. In Jai Berham v. Kedar Nath Marwadi (1922) 49 IA 351, their Lordships of the Privy Council said : "It is the duty of the Court under S. 144 of the Civil Procedure Code to place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the court to act rightly and fairly according to the circumstances towards all parties involved. Cains, LC said in Rodger v. Comptoir d' Escompte de Paris, (1871) LR 3 PC : "One of the first and highest duties of all the Courts is to take care that the act of the Courts does not injury to any

> of the suitors and when the expression, the act of the Court is used, it does not mean merely the act of the primary Court, or of any intermediate Court of appeal but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter upto the highest Court which finally disposes of the Case "This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it, AA Nadar v. SP Rathinasami (1971) 1 MLJ 220. IN the exercise of such inherent power the Courts have applied the principles of restitution to myraid situations not strictly falling within the terms of S. 144."

Considering the observations made by the apex court as well as this court in the aforesaid two decisions, and considering the mental agony of the petitioner who has been deprived of the benefits flowing from the orders of this court dated 30.11.1983 without any just and valid cause by the State without challenging the said judgment and order before the Higher Forum and considering the feeling of deliberate delay, injustice and disregard shown by the State Government towards the verdict of this court, according to my opinion, this is not a simple case of delay in payment of legitimate claim of a person but it is a case wherein the rights were crystallized by the order of this court dated 30.11.1983 and yet payments of such amount flowing from the said order has been delayed and that too without challenging those orders before the higher forum and, therefore, some strict view is required to be taken by this court considering the disregard shown by the State towards the orders of this court. If it would have been a simple case of delay in making payment of any legitimate claim of the petitioner, then, considering the facts and circumstances of the case, the court would have awarded interest accordingly. In the present case, according to my opinion, the respondent State is required to be directed to pay interest on such delayed payments at the penal rate of 18 per cent per annum, considering the disregard shown by the State towards this Court's orders and also considering the mental agony in the mind of the petitioner for this considerable period. The petitioner is also entitled for costs for three litigations, one being the special civil application no. 190 of 1978, another one being the contempt petition referred to hereinabove and the third one being the present petition. Considering the facts and circumstances of the case, I am

quantifying the cost for three litigation at Rs.15,000.00.

Therefore, considering the entire facts and circumstances of the case and the disregard State towards this COurt's order and judgment dated 30.11.1983 without any genuine cause, the respondents are directed to pay interest to the petitioner at the rate of 18 per cent per annum on the amount which has been paid late, for a period, from the date on which such amount has become due till the date on which it has been actually paid to the petitioner. The respondents are further directed to pay costs, quantified at Rs.15,000.00, to the petitioner. These orders passed by this COurt are required to be complied with by the respondents within two months from the date of receipt of copy of these orders. Rule is made absolute in terms indicated hereinabove.

Dt.1.12.2003. (H.K. Rathod,J.)
Vyas